

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

FOUR CORNERS FINANCIAL GROUP,)
)
Plaintiff Below/Appellant,)
)
v.)
)
SAYED T. AUGLEY,)
)
Defendant Below/Appellee.)

CA. No. CPU4-09-007373

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**MEMORANDUM OPINION AND ORDER ON APPEAL FROM THE
JUSTICE OF THE PEACE COURT**

Date Submitted: July 1, 2011
Date Decided: August 3, 2011

DAVIS, J.

This is an appeal and a cross-appeal from a judgment of the Justice of the Peace Court of the State of Delaware. Four Corners Financial Group (“FCFG”) filed suit in the Justice of the Peace Court for unpaid agency fees from Sayed T. Augeley. Mr. Augeley answered and counterclaimed for sales commissions due from FCFG. This Court held a trial on the claims on June 20, 2011. The Court reserved decision and asked the parties for additional briefing on an issue relating to Court of Common Pleas Civil Rule 72.3. The Court set July 1, 2011 as the deadline for filing the additional briefing. This is the Court’s Memorandum Opinion and Order

following trial. For the following reasons set forth below, the Court is entering judgment in favor of Mr. Augeley on FCFG's claims and judgment in favor of FCFG on Mr. Augeley's claims.

I. General Procedural Background

On February 4, 2009, FCFG filed an action for breach of contract against Mr. Augeley in the Justice of the Peace Court. Through the suit, FCFG sought \$819.42 in resultant damages from Mr. Augeley for the purported breach of contract. FCFG alleged that Mr. Augeley agreed to pay certain agency fees during the course of his association with FCFG. Mr. Augeley denied that he breached any contract and also filed a counter-claim against FCFG for earned, but unpaid, commissions in the amount of \$12,848.48.

The Justice of the Peace Court held a trial in this matter on September 4, 2009. Following trial, the Justice of the Peace Court entered judgment for FCFG in the amount of \$1,001.55. The Justice of the Peace Court also entered judgment for Mr. Augeley in the amount of \$11,888.00. The net judgment created a liability for FCFG in the amount of \$10,886.45 plus 5.5% per annum post judgment interest.

On September 22, 2009, FCFG timely filed a Notice of Appeal in the Court of Common Pleas. On June 20, 2011, this Court held a trial on the parties claims. At the conclusion of the trial, the Court ordered post-trial briefs from the parties on the limited issue of Court of Common Pleas Civil Rule 72.3(f) concerning appeals *de novo* from the Justice of the Peace Courts.

II. Facts

Paul R. Maynor is the sole proprietor and owner of FCFG. Mr. Maynor created FCFG as an entity that would market and sell insurance policies. In addition, FCFG provides financial planning services. Mr. Augeley became associated with FCFG in May 2008.

Mr. Maynor met Mr. Augeley in May 2008 in the lobby of the building where FCFG is located. Mr. Augeley was originally in the building to interview with another company when Mr. Maynor approached him and offered Mr. Augeley an opportunity to interview with FCFG. During the interview, Mr. Maynor informed Mr. Augeley that he had the possibility of making up to \$150,000 a year working for FCFG. A few days later, Mr. Maynor called Mr. Augeley and informed him that he was eligible for a position with FCFG as a Financial Planner Associate/Insurance Broker (a “Pre-Contract Broker”). Mr. Augeley quickly accepted the position and began working with FCFG. Shortly thereafter, Mr. Augeley attended a “Fundamentals School,” hosted by First Financial Group (“First Financial”), prior to beginning his relationship with FCFG.

A. Relationship Between FCFG and Mr. Augeley

Mr. Maynor testified that FCFG hires individuals as Pre-Contract Brokers to test whether the individual has the requisite skills for success in the financial planning industry. After meeting certain minimum requirements, FCFG would then offer the Pre-Contract Broker a position as a Financial Representative. The minimum requirements to become a Financial Representative include the following: (i) acquire a Life and Health Insurance License; (ii) be appointed as a broker with the Guardian Life Insurance Company of America (“Guardian”); (iii) develop a comprehensive business plan; (iv) complete a web based training program offered by the Guardian; (v) attend formal training sessions and regular meetings at FCFG; (vi) pass the Series 6 and Series 66 securities tests; (vii) abide by FCFG’s dress code; (viii) provide FCFG with at least four prospective candidates a year; and (ix) submit at least 6 insurance applications that yield a minimum of \$6,000 of premium (excluding applications for the Pre-Contract Broker and immediate family members) within 90 days beginning with FCFG.

Mr. Maynor stated that Pre-Contract Brokers were compensated only through commissions earned for issuing insurance policies marketed by FCFG. A Pre-Contract Broker's commission is calculated as 50% of the total first year premium on an issued policy. Once an associate reached the status of Financial Representative, they would receive an 80% payout of the total first year premium of an issued policy as commission.

In addition to the above-listed requirements, Mr. Maynor testified that a Pre-Contract Broker must pay certain agency fees to FCFG. These agency fees include but are not limited to office rent, phone bills, copy charges, mailing charges, and marketing costs. Neither party introduced into evidence a signed document showing an agreement for Mr. Augeley to pay these fees. Furthermore, FCFG did not produce any document or writing that specifically set forth how the agency fees were to be calculated or when the fees would be due. Mr. Maynor testified that the terms of the relationship for a Pre-Contract Broker were explained to Mr. Augeley prior to his employment. As further support for its claim for agency fees, FCFG relies upon a one-time payment of \$110 by Mr. Augeley and a series of statements provided to Mr. Augeley on a monthly basis (the "Monthly Agency Statements").¹ Mr. Augeley stated that the parties never reached an agreement concerning the Agency fees. Mr. Augeley also testified that he was under the impression that he was an employee of FCFG, not an independent contractor.

To show that Mr. Augeley was simply an independent contractor, FCFG points to an unsigned Financial Representative Pre-Contract,² a signed Brokerage Agreement,³ an unsigned Broker Kit,⁴ Monthly Agent Statements,⁵ and a canceled check from Mr. Augeley for the June

¹ Plaintiff's Exhibit 5.

² Plaintiff's Exhibit 6 pgs. 3-4.

³ Plaintiff's Exhibit 6 pgs. 1-2.

⁴ Plaintiff's Exhibit 1.

⁵ Plaintiff's Exhibit 5.

2008 agency fees.⁶ FCFG also relied on the testimony of Mr. Maynor describing conversations between himself and Mr. Augeley in May 2008 concerning Mr. Augeley's employment status. Mr. Maynor stated that he explained to Mr. Augeley the nature of the relationship, which was one involving FCFG and Mr. Augeley as an independent contractor.

Mr. Augeley understood that his compensation consisted of only commissions earned in marketing FCFG's products. However, Mr. Augeley believed that he was an employee of FCFG and that FCFG would pay Mr. Augeley when he earned a commission. In support of his understanding that he was an employee of FCFG, Mr. Augeley points to the fact that FCFG has not provided a signed Financial Representative Pre-Contract or a signed Broker Kit. Mr. Augeley denies that there were verbal discussions between Mr. Maynor and him about the nature of their relationship. Mr. Augeley also points to the signed Brokerage Agreement that states: "[t]his agreement is made by and between the Principal and the Broker. The Guardian Life Insurance Company of America, referred to as the Company, is not a party to this Agreement except to the extent of its endorsements."⁷ Mr. Augeley believes that he is the "Broker" referred to in the Brokerage Agreement and that Mr. Maynor is the "Principal" mentioned in that agreement. As such, Mr. Augeley contends that the signed Brokerage Agreement shows that he was an employee of FCFG.

B. Role of Guardian and First Financial

Guardian is the underwriter for the insurance policies that Mr. Augeley was to market and sell while at FCFG. Moreover, Guardian is the company that ultimately would issue the insurance policies to the customer. In order for Mr. Augeley to market and sell these policies, he needed to take and pass several tests required by the FCFG Pre-Contract requirements. These

⁶ Defendant's Exhibit 4.

⁷ Plaintiff's Exhibit 1, first sentence.

tests included the Life and Health Insurance Examination and Anti-Money Laundering (“AML”) test. Mr. Augeley passed his Life and Health Insurance Examination which was certified by Delaware Department of Insurance.⁸ In October 2008, near the end of Mr. Augeley’s association with FCFG, Mr. Augeley passed the AML test. Mr. Augeley also passed the Life and Health Insurance Examination. After passing these tests, Mr. Augeley was able to solicit customers and sell Guardian’s life insurance policies.

First Financial was the intermediary between FCFG and Guardian. As an intermediary, FCFG brokers would submit applications and other paperwork for policies to First Financial. First Financial would then proceed to give these to Guardian. First Financial provided training for the brokers, including Mr. Augeley, in Bethesda, Maryland. It was sometime during his training that Mr. Augeley signed the Brokerage Agreement and was given the Broker Kit.

C. The Process of Issuing an Insurance Policy

Mr. Augeley claims that, upon his termination from FCFG, he was owed commissions for insurance applications submitted. Mr. Augeley contends that FCFG, and not First Financial, is responsible for the commissions he earned while working with FCFG. Mr. Maynor testified that First Financial is responsible for compensating brokers when commissions are due. According to the Brokerage Agreement the principal was to pay the commission. This is stated in section (2) of the Brokerage Agreement.⁹ First Financial was the principal and is responsible for commissions due under the agreement.

To earn a commission, a Broker must cause a policy to be issued. The process by which a policy is issued is as follows:

- 1) Broker meets with the customer and determines their policy needs;
- 2) Broker then gives the paperwork to Heather, the administrative assistant at FCFG;

⁸ Defendant’s Exhibit 1.

⁹ Plaintiff’s Exhibit 6 and Plaintiff’s Exhibit 1 pg. 4

- 3) Heather gives it to Linda at First Financial;
- 4) First Financial gives it to Guardian;
- 5) Guardian determines the type of insurance (for life insurance it would be either term, whole life, or a mixture of the two), and the maximum coverage for each type;
- 6) Guardian responds with the policy type and maximum coverage through a reverse of the above-listed flow of information eventually reaching the Broker;
- 7) The Broker then goes back to the customer and works with them to determine from their approved policy limits the exact amount of coverage they want. The customer's choice is driven largely by the price of the premiums;
- 8) After the customer has decided the desired type of coverage and premium amount, the customer writes a check for that amount;
- 9) The Broker gives this paperwork to Heather, who gives it to Linda, who gives it to Guardian;
- 10) Guardian issues the insurance policy to the customer. At this time the Broker would have earned a commission. If the customer stops paying the premiums or cancels the policy within two (2) years, the Broker would be "charged back," or have to pay back, the commission that was earned.

Mr. Augeley testified that he believed once he handed the policy to Mr. Maynor his part of the process was done, and that he should wait for further instruction by Mr. Maynor. Mr. Augeley further testified that he understood that in order for him to earn his commission he needed to have customers actually pay the first year premium for their policy. Mr. Augeley stated that if the customer did not pay for the policy no commissions would be distributed.

During his relationship with FCFG, Mr. Augeley solicited and submitted applications for three policies. Two of the applications were prepared on September 30, 2008 and the other application was prepared on October 10, 2008. After preparing these applications, Mr. Augeley submitted them to Mr. Maynor for processing.

Subsequent to submitting these applications, the relationship between Mr. Maynor and Mr. Augeley deteriorated. Mr. Maynor terminated Mr. Augeley from his association with FCFG on November 18, 2008. The evidence adduced at trial demonstrates that Guardian had not issued any insurance policies out of the applications submitted by Mr. Augeley by the time of Mr.

Augeley's termination. Moreover, the evidence at trial demonstrated that Mr. Augeley made limited, to no, additional efforts to process the applications.

Mr. Maynor contacted Mr. Augeley sometime after his termination to inquire whether any of the insurance applicants were interested in obtaining the insurance for which they had applied. No insurance policies were ever issued for any of the applications.

III. Discussion

The claims presented in this case have raised several issues for the Court's consideration. Those issues are whether (i) the parties properly perfected the appeal from the Justice of the Peace Court, (ii) an enforceable contract, or contracts, existed between FCFG and Mr. Augeley, and (iii) Mr. Augeley had a viable claim for quantum meruit from FCFG.

A. Perfection of Appeal from the Justice of the Peace Court

The process of an appeal from the Justice of the Peace Court to the Court of Common Pleas is codified in the Court of Common Pleas Civil Rule 72.3. In order for an appeal from the Justice of the Peace Court to be perfected it must comply with the "mirror image" rule. The purpose of this rule is to "prevent this [C]ourt from acquiring subject matter jurisdiction over an appeal *de novo* from the Justice of the Peace Court, unless the appeal from the court below contains the identical: 1) parties, 2) character or right in which the parties are sued, and 3) cause and form of action."¹⁰ Court of Common Pleas Civil Rule 72.3(f) states: "An appeal to this Court that fails to join the identical parties and raise the same issues that were before the Court below shall result in a dismissal on jurisdictional grounds."¹¹ In the present case both parties and all issues that were before the Justice of the Peace Court are before this Court on appeal. The appeal has been properly perfected.

¹⁰ *Levy's Loan Office v. Folks*, 2009 WL 1856642, *2 (Del. Com. Pl. 2009) (citing *Panzer Management Co. v. Farrall*, 1987 WL 8223 (Del. Super. Ct. 1987); *Pavetto v. Hansen*, 2004 WL 2419164, *1 (Del. Super. Ct. 2004)).

¹¹ Ct. Com. Pl. Civ. R. 72.3(f).

After the appeal has been properly perfected this Court shall have jurisdiction as provided in Court of Common Pleas Civil Rule 72.3(f). After this court has jurisdiction the “Court may under its rules permit modification or amendment to the pleading[s].”¹² The Court may do so when “justice requires leave to file an omitted counterclaim, or to amend a pleading, when failure to grant such leave would deprive a litigant of his right to a *de novo* appeal[,]”¹³ or “when the complaint on appeal ‘sets forth more specific claims’ than those made in the original complaint, ‘but does not alter the subject matter of the case below.’”¹⁴

This appeal complies with the requirements of Court of Common Pleas Civil Rule 72.3 (f). The parties to this appeal are identical. The claims raised on appeal are identical to the issues decided by the Justice of the Peace Court. FCFG brought suit against Mr. Augeley for breach of contract. Mr. Augeley answered and counterclaimed for breach of contract. Those claims have both been presented to this Court on appeal. Mr. Augeley’s claim that he should, in the alternative, recover commissions under a theory of quantum meruit does not affect the jurisdiction of this Court. Quantum meruit is commonly used to recover for benefits conferred when no contract is found to have existed. A quantum meruit claim does not alter the subject matter of the case on appeal.

B. Contracts Between FCFG and Mr. Augeley

FCFG brought suit for a breach of contract by Mr. Augeley for failure to pay agency fees. Mr. Augeley countersued for failure to pay commissions he had earned while employed by FCFG. There was no written contract between FCFG and Mr. Augeley or, at least, no one produced one at trial. FCFG has argued that an oral agreement between the parties was the basis

¹² *Levy’s Loan Office*, 2009 WL 1856642, at *2 (citing *Silverview Farm Inc. v. Laushey*, 2006 WL 1112911).

¹³ *Holloway v. Wheatley*, 2007 WL 3231589, at *2 (Del. Com. Pl. 2007).

¹⁴ *Ham v. Soutgate Realty Ass’n*, 2009 WL 2778430, at *3 (Del. Com. Pl. 2009) (quoting *Ceccotti v. Leight*, 2007 WL 707552, at *1 (Del. Com. Pl. 2009)).

for charging agency fees. The only written agreement entered into evidence was the Brokerage Agreement between First Financial and Mr. Augeley. The Brokerage Agreement provides the terms and conditions relating to the payment of commissions to brokers; however, this agreement does not address, in any way, the payment of agency fees.

In order for FCFG to prevail, FCFG must demonstrate that an enforceable oral agreement existed between FCFG and Mr. Augeley, that Mr. Augeley breached the oral agreement and that FCFG incurred resultant damages from the breach. The Court of Chancery in *Hughes v. Frank*, identified the essential elements of an oral contract as:

- (1) A promise on the part of one party to act or refrain from acting in a given way;
- (2) offered to another, in a manner in which a reasonable observer would conclude the first party intended to be bound by acceptance, in exchange for;
- (3) some consideration flowing to the first party or to another;
- (4) which is unconditionally accepted by the second party in the terms of the offer, which may include (a) a verbal act of acceptance; and (b) performance of the sought-after-act.¹⁵

In addition, the material provisions of the agreement must not be so indefinite that the contract cannot be enforced.¹⁶ Stated another way, “The material terms also must be clear for a court to enforce the agreement”¹⁷ and “both parties must assent to the same things, [terms,] in the same sense and at the same time. Their minds must meet to all terms.”¹⁸

The Court concludes that FCFG did not prove by a preponderance of the evidence that an enforceable oral contract existed between FCFG and Mr. Augeley with respect to the agency fees. The evidence at trial does not show that both parties assented to the same material terms. There was no meeting of the minds. FCFG believed they made a contract with Mr. Augeley in that: 1) he was an independent contractor, 2) he would pay an agency fee and other cost, and 3)

¹⁵ *Hughes v. Frank*, 1995 WL 632018, at *3 (Del. Ch. 1995) (citing *Hunter v. Diocese of Wilmington*, 1987 WL 15555, at *4 (Del. Ch. 1987)).

¹⁶ *Hindes v. Wilmington Poetry Soc’y*, 138 A.2d 501, 503 (Del. Ch. 1958).

¹⁷ *Hughes*, 1995 WL 632018 at *3.

¹⁸ *Gleason v. Ney*, 1981 WL 88231, at *1 (Del. Ch. 1981).

he would be paid commission by First Financial. Mr. Augeley believed that he had made a contract with FCFG in which: 1) he was an employee of FCFG, 2) he didn't have to pay the agency fee and other cost, and 3) the commission would be paid to him by FCFG. FCFG failed to produce any evidence showing how the agency fees were to be calculated. The Court also finds the one-time payment of agency fees by Mr. Augeley and a series of unpaid Monthly Agency Statements without more are not sufficient evidence to find performance of the oral contract beyond the one month actually agreed to and paid for by Mr. Augeley. Under these circumstances, FCFG has failed to establish, by a preponderance of the evidence, that the material terms of the agreement are clear and there was a meeting of the minds regarding the contract terms. The Court, therefore, holds that there was no enforceable oral contract between FCFG and Mr. Augeley.

In addition, Mr. Augeley's claim that commissions were due under the terms of a contract between the parties is not supported by a preponderance of the evidence. The only written agreement governing the terms of commissions was between First Financial and Mr. Augeley. First Financial is not a party to this action. Even if First Financial were before this Court, Mr. Augeley's claim would fail. The terms of the contract require that a policy be issued before commissions are paid. No policy submitted by Mr. Augeley was ever issued. Therefore, Four Corners did not breach a contract with Mr. Augeley to pay commissions.

C. Quantum Meruit

Mr. Augeley argues, in the alternative, that the Court should allow him to recover under quantum meruit if the Court finds that no contract existed between the parties. The Delaware

Superior Court, in *Hynansky v. 1492 Hospitality Grp., Inc.*, explained the requirements to recover under quantum meruit.¹⁹ In *Hynansky* the Court said:

Recovery under a quasi-contract action is the value of the services provided, not the value of the benefit received.

In the absence of an express agreement, a plaintiff may be able to recover the reasonable value of the materials or services rendered to a defendant on a quasi-contract theory. To prevail on this theory, Plaintiff must show at trial that he provided services to Defendants and that he performed the services with the expectation that Defendants would pay for them. Plaintiff must also show that the circumstances should have put Defendants on notice that Plaintiff expected to be paid. If Plaintiff makes this showing, he may recover the reasonable value of his services under the restitutionary principle of quantum meruit. The phrase literally means “as much as he deserves,” and is the “reasonable worth or value of services rendered for the benefit of another.”²⁰

Mr. Augeley did not prove by a preponderance of the evidence that he is entitled to recover under a theory of quantum meruit. Mr. Augeley did not show that he provided any benefit to FCFG. FCFG would only have received a benefit from Mr. Augeley’s services if a policy was issued. The benefit to FCFG would have been in the form of an “override” payment for being Mr. Augeley’s principal. Mr. Augeley testified at trial that he knew he would not be entitled to any commissions unless a policy was issued. Mr. Augeley submitted three applications for policies. Those applications did not result in any issued policies. In addition, the evidence demonstrates that Mr. Augeley failed to exercise due diligence in following up on the applications. If Mr. Augeley followed up on the applications after his termination, it is possible that Guardian would have issued the insurance policies. Therefore, Mr. Augeley should not have had an expectation of recovering commissions from FCFG.

¹⁹ 2007 WL 2319191 (Del. Super. Ct. 2007).

²⁰ *Id.* 2007 WL 2319191 (citing *Marta v. Nepa*, 385 A.2d 727, 729 (Del. 1978); *Bellanca Corp. v. Bellanca*, 169 A.2d 620, 623 (Del. 1961); *Middle States Drywall, Inc. v. DMS Properties-First, Inc.*, 1996 WL 453418, at *10 (Del. Super. 1996)).

IV. Conclusion and Order

For the reasons stated above, the Court finds neither party has proven its case by a preponderance of the evidence. Judgment is entered in favor of Mr. Augeley on FCFG's claims and Judgment is entered in favor of FCFG on Mr. Augeley's claims. Each party shall bear its own costs.

IT IS SO ORDERED this 3rd day of August, 2011.

Eric M. Davis
Judge